



# THE ATTORNEY GENERAL OF TEXAS

JOHN BEN SHEPPERD  
ATTORNEY GENERAL

AUSTIN 11, TEXAS

September 21, 1954

Hon. Sam Lee  
District Attorney  
Angleton, Texas

Letter Opinion No. MS-154

Re: Authority of a Commissioners' Court  
to levy \$.30 ad valorem tax for farm  
to market roads or flood control under  
the provisions of Section 1-a of Article  
8 of the Texas Constitution when the  
State Automatic Tax Board is making the  
State levy in portions of the county  
during the duration of a tax donation.

Dear Mr. Lee:

Your letter requesting our opinion relative to the above captioned matter reads as follows:

"Article 8, Section 1a, of the Constitution of Texas, provides that from and after January 1, 1951, no state ad valorem tax shall be levied upon any property within this State for general revenue purposes, and further provides that the several counties, except on homesteads, may levy ad valorem taxes upon all property within their respective boundaries for county purposes not to exceed 30¢ on each \$100 valuation, except in those counties or political subdivisions or areas of the State from which tax donations have heretofore been granted, in which said areas the State Automatic Tax Board shall make the levy.

"Article 7048a, Revised Civil Statutes of Texas, Section 7 thereof, provides that before any county shall make the levy the question of levying the tax shall be submitted to a vote of the qualified property taxpaying voters of said county at an election called for that purpose.

"The Attorney General of Texas in Opinion No. V-1077 dated July 3, 1950, upheld the constitutionality of Article 7048a.

"In a county where the qualified property taxpaying voters have voted favorably in a county wide election for the Commissioners Court of a given county to be able to levy the tax of not exceeding 30¢ on each \$100 valuation excepting the first \$3,000 value of residential homesteads, in the event that tax remissions have been made prior to the passage and adoption of Article 8, Section 1a of the Constitution, and Article 7048a, Vernon's Civil Statutes,

to certain specified road districts or areas in the county and the Automatic Tax Board is making the levy within those districts within the county, can the Commissioners Court, upon a favorable vote by the people as provided in Art. 7048a, make the levy in all of the rest of the parts of the county except those parts wherein the Automatic Tax Board is making the levy?

"Under the facts stated above after a favorable election, would the Commissioners Court have the power to make the levy throughout all of the county including those areas of the county where the levy was being made by the Automatic Tax Board to satisfy the demands of Tax Remission Bills?

"Even with a favorable vote of the people, would it be illegal for the Commissioners Court of Brazoria County to levy the 30% ad valorem tax provided for, supra, until such time as the Automatic Tax Board ceases to levy in any part of the county?

"The paramount question is, of course, whether the Commissioners Court can make a levy of 30% ad valorem tax in those parts of the county, with a vote of the people in a county wide election favoring the levy, not being levied on by the Automatic Tax Board but in which county the Automatic Tax Board is making the levy in certain specified districts?

"I enclose to you and attach hereto and make a part of this request a copy of an opinion setting forth my views on the subject."

Section 1-a of Article 8 of the Constitution of Texas, as adopted in 1948, provides:

"From and after January 1, 1951, no State ad valorem tax shall be levied upon any property within this State for general revenue purposes. From and after January 1, 1951, the several counties of the State are authorized to levy ad valorem taxes upon all property within their respective boundaries for county purposes, except the first Three Thousand Dollars (\$3,000) value of residential homesteads, not to exceed thirty cents (30%) on each One Hundred Dollars (\$100) valuation, in addition to all other ad valorem taxes authorized by the Constitution of this State, provided the revenue derived therefrom shall be used for construction and maintenance of Farm to Market Roads or for Flood Control, except as herein otherwise provided.

"Provided that in those counties or political subdivisions or areas of the State from which tax donations have heretofore been granted, the State Automatic Tax Board shall continue to levy the full amount of the State ad valorem tax for the duration of such donation, or until all legal obligations heretofore authorized by the law granting such donation or donations shall have been fully discharged, whichever shall first occur; provided that if such donation to any such county or political subdivision is for less than the full amount of State ad valorem taxes so levied, the portion of such taxes remaining over and above such donation shall be retained by said county or subdivision."

Brazoria County is a part of the Brazos River Conservation and Reclamation District. Chapter 3, Acts of the 43rd Legislature, 4th Called Session, as amended by Chapter 368, Acts of the 44th Legislature, First Called Session, provided that for a period of twenty years the State ad valorem tax collected for general revenue purposes was donated to the Brazos River Conservation and Reclamation District by the State of Texas. The twenty-year period began September 1, 1935. You state that all obligations under this donation act to the Brazos River Conservation and Reclamation District have now been fulfilled and it is your understanding that the State Automatic Tax Board will not levy any tax in Brazoria County by reason of this donation act.

Chapter 352, Acts of the 49th Legislature, Regular Session, granted to the Town of Freeport all the state ad valorem taxes for general fund purposes within Road Districts 8, 9, and 23 in Brazoria County, Texas, over and above that not previously donated and set up a trust fund for the purpose of paying the interest and sinking fund of the bonds issued for the purpose of raising, strengthening, and extending existing seawalls and breakwaters within and without the corporate limits of the City of Freeport, and further provided that when the moneys in the sinking fund are sufficient to retire the bond issue the donation shall cease.

You state that the Automatic Tax Board of the State of Texas has already met for the current year and the 30% ad valorem tax was not levied in Brazoria County except in Road Districts 8, 9, and 23.

It is clear to us in construing Sec. 1-a of Article 8 of the Constitution from its four corners that it was the manifest intention that the several counties of the State are authorized to levy ad valorem taxes upon all property within their respective boundaries, for revenue to be used for the construction and maintenance of farm to market roads or for flood control, not to exceed thirty cents on each One Hundred Dollars valuation, with the exception of the subdivisions of the counties wherein the State Automatic Tax Board is continuing to levy the full amount of the State ad valorem tax for the duration of a tax donation. You will note that the proviso to Section 1-a reads in part as follows:

"Provided that in those counties or political subdivisions or areas of the State from which tax donations have heretofore been granted, the State Automatic Tax Board shall continue to levy the full amount of the State ad valorem tax for the duration of such donation, or until all legal obligations heretofore authorized by the law granting such donation or donations shall have been fully discharged, whichever shall first occur; . . ."  
(Emphasis added)

It follows that your first question is answered in the affirmative and your second and third questions in the negative.

Yours very truly,

JOHN BEN SHEPPERD  
Attorney General

By  
W. V. Geppert  
Assistant

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